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24 April 2010

The Honorable Justice Charles Johnson  
Supreme Court Court Rules Committee Chair  
Temple of Justice  
P. O. Box 40929  
Olympia,  
WA 98504-0929

Re. Proposed Change to CrRLJ 3.2, Bail Forfeiture and Infraction  
Penalty-Setting

Dear Justice Johnson:

I understand there may be concern by the Supreme Court Rules Committee about the progression of work necessary to effectuate the proposed elimination of bail forfeiture as a resolution of a criminal charge and to eliminate involvement by the Supreme Court in setting penalties for civil infractions, such as traffic infractions and park, fishing, hunting, and natural resource violations.

Please understand that considerable thought has been given to this aspect of the rule, both within the DMCJA, the BJA and AOC. In addition some preliminary work has been done contacting the involved executive branch agencies (primarily Fish & Wildlife, Parks, DOL, and Natural Resources) in anticipation of the elimination of bail forfeiture as a resolution of a criminal charge.

It is the express proposal of the DMCJA that the Supreme Court adopt the proposed changes to CrRLJ 3.2 with an effective date no earlier than July 1, 2012 for all of the reasons stated in prior correspondence.

This delayed effective date would allow the necessary legislative and executive branch responses. This would allow two legislative sessions for the legislative branch to implement state law in reaction to the rule if they choose. For example, Fish and Wildlife, Parks and Natural Resources may wish to ask the legislature to define some violations now identified as a misdemeanor instead as a civil infraction.



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Criminal charges laid by Fish and Wildlife will automatically be under the general penalty provisions for misdemeanor and gross misdemeanor offenses unless the Department asks the legislature statutory change for some special treatment of their offenses in terms of punishment. No DOL change will be necessary.

And, for example, each affected executive branch agencies will need to establish their own process through the Administrative Procedures Act, to set penalties for their civil infractions. This is a well-established process already used by some executive branch agencies, for example, the Department of Ecology.

By state statute, the Department of Licensing already considers a bail forfeiture the same as a conviction (because money is paid to the court). See RCW 46.20.270(4). DMCJA leadership has consulted with the Department of Fish and Wildlife, and we believe that they have started to establish a new administrative process to establish infraction amounts, but are waiting on the Supreme Court Rule change. DMCJA/AOC staff has consulted with the Department of Parks and we believe that they understand the issue. There are other executive branch agencies that will have to make similar changes to their procedures; however, the impact to them and to the courts will be smaller just because of the numbers involved.

I understand that Mr. Jeff Hall is prepared to contact the Governor's Office regarding implementation of the proposed executive agency process change.

The DMCJA and the BJA has acknowledged that each will remain available to the other branches of government, if requested, to participate in a smooth transition from the Supreme Court to the legislative and executive branches of what should be their function.

The DMCJA would be happy to report directly to a Supreme Court Rules Committee meeting if that would best serve the Court and the issues presented.

Sincerely,

Judge Glenn Phillips  
DMCJA President 2009-10

Judge Stephen Brown  
DMCJA President Elect

Judge Marilyn Paja  
DMCJA Past President



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Cc: Nan Sullins, AOC  
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